THE HON'BLE SRI JUSTICE K.C. BHANU

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WRIT PETITION NO. 13161 OF 2005

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Dated: 22-09-2005

Between:

Chagireddy Pothireddy

……**Petitioner**

Vs.

The District Collector (Excise),

Prakasam Dist. at Ongole and others.

…….Respondents

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O R D E R:

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This writ petition is filed for declaring the action of respondent Nos. 1 to 4, in declaring the fifth respondent as highest bidder for allotment of (Retail outlet under A.P.Excise Rules) Shop No.319 at Jangamguntla Village of Cumbum Mandal, Prakasam District, even though he failed to comply with the conditions laid down under Rules 18 and 19 of the A.P.Excise (Lease of Right of Selling by shop and conditions of License) Rules, 2005 as illegal and contrary to the relevant provisions of the said Rules and also for setting aside the same.

It is the case of the petitioner that on a notification issued by the respondent authorities, dated 24.05.2005 calling for applications from the eligible candidates for allotment of a shop, the petitioner submitted the sealed tender on 01.06.2005 for shop No.319 situated at Jangamguntla Village Cumbum Mandal, Prakasam District, by paying the prescribed amount. The petitioner quoted an amount of Rs.4,05,000/-. On enquiry, he came to know that the fifth respondent also submitted his sealed tender for the allotment of the said shop and he quoted an amount of Rs.11,09,999-

99ps. After opening the sealed tenders, the fifth respondent was declared as the highest bidder and the petitioner was declared as the second highest bidder. It is also the case of the petitioner that as per Rule 18 of the Co-operative Society Rules, after deducting 10% of E.M.D. out of the upset price, he has to deposit an amount of Rs.3,35,000/- on 02.06.2005 itself, on which date the sealed tenders were opened, but in the instant case the fifth respondent was permitted for remitting 1/3rd of the amount upto 07.06.2005 i.e., beyond the limitation as prescribed under the Rules. Hence, the action of respondents 1 to 4 is contrary to the said Rules. It is further contended that as the fifth respondent is having political background, he was granted license against the Rules prescribed therein.

The respondents filed counter stating that as required under Rule 14(5) of the Rules, the petitioner has not submitted any demand draft towards earnest money deposit for a sum of Rs.35,000/- or equivalent to 10% of the upset price. Hence, his tender was rejected. Whereas in the case of fifth respondent, he was declared as the highest bidder as he has complied with all the formalities. As the petitioner has misrepresented the facts before this court stating that he is the next highest bidder, his case cannot be considered.

The learned counsel for the petitioner contends that as the fifth respondent did not deposit 1/3rd of the bid amount, he is not entitled for allotment of the said shop bearing No.319 and the same has to be allotted to the petitioner, as he is the second highest bidder and complied with the terms and conditions of the bid.

On the other hand, the learned Government Pleader for Excise submits that the tender of the petitioner was rejected on the ground that he has not deposited the E.M.D. Hence, the question of treating the petitioner as highest bidder does not arise.

The learned counsel for the fifth respondent submits that as the tender of the

petitioner has been rejected by the competent authority, he has no right to challenge the same and as the writ petition is filed without availing an alternative remedy of appeal before the Deputy Commissioner of Excise, as provided under Section 63 of the Andhra Pradesh Excise Act , 1968 (for short 'the Act') the writ petition is liable to be dismissed.

Section 63 of the Act reads as follows:

> "1) *Any person aggrieved by an order passed by any officer, other than the Commissioner or Collector, under this Act, may within forty five days from the date of communication of such order, appeal to the Deputy Commissioner.*
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> *2) Any person aggrieved by an order passed by the Deputy Commissioner or Collector under this Act, may, within sixty days from the date of Communication of such order, appeal to the Commissioner".*

It is not in dispute that the alternative remedy is not a bar for exercising the jurisdiction under Article 226 of the Constitution of India, under the following three circumstances:

1. *when the principles of natural justice have been violated;*
2. *when the fundamental right of the petitioner has been violated and*
3. *the jurisdiction of the authority is under challenge.*

In this case none of the above conditions has been oppressed. The only dispute that arises for consideration in this writ petition is with regard to the payment of E.M.D. along with the sealed tender. It is not in dispute that the payment of 10% of the E.M.D. is a condition precedent for opening the tenders. The stand of the Government is that the tender of the petitioner has been rejected on the ground that he has not deposited the required E.M.D. amount. On the other hand, the learned counsel for the petitioner contended that on 31.05.2005 itself, 10% of the E.M.D. has

been deposited. The fourth respondent-Circle Inspector-cum-Prohibition & Excise, Cumbum verified the applications submitted under Rule 6 of the said Rules along with E.M.D. and after satisfying about the D.D. for an amount of Rs.35,000/-, in the name of the District Collector, i.e., the auctioning authority, has entered the name of the petitioner in the Registers and took their signatures in the registers maintained by Respondent Nos. 1 to 4 and there after, the E.M.D. has been returned to the petitioner under proper acknowledgement.

In my considered opinion, this court cannot go into the disputed questions of facts under Article 226 of the Constitution of India, which have to be determined by the appellate authority.

Hence, the writ petition is disposed of with a direction to the petitioner to file an appropriate appeal before the competent authority and redress his grievance. No costs.

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K.C.BHANU J.,

Dt.27.09.2005

c.c. in one week.

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